**6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2017-0701; FRL-9978-65-Region 5]**

# Air Plan Approval; Wisconsin; Modification of Greenhouse Gases Language

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on November 28, 2017. In this revision, WDNR makes modifications to the language associated with how greenhouse gases are evaluated in the Prevention of Significant Deterioration (PSD) program. These revisions were made to reflect changes required by the United States Supreme Court in its June 23, 2014 decision, *Utility Air Regulatory Group (UARG) v. EPA)*, 134 S. Ct. 2427.

**DATES:** Comments must be received on or before **[insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2017-0701 at http://www.regulations.gov, or via email to damico.genevieve@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit http://www2.epa.gov/dockets/commenting-epa-dockets.

**FOR FURTHER INFORMATION CONTACT:** Radhica Kanniganti, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-8097, kanniganti.radhica@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Review of State Submittals

II. What Action is EPA Taking?

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

## I. Review of State Submittals

This proposed rulemaking addresses the November 28, 2017, WDNR submittal for SIP revision, revising the rules in the Wisconsin SIP to reflect the changes required by *UARG* v *EPA*, 134 S. Ct. 2427, on how greenhouse gases are evaluated in the PSD program. The Clean Air Act's (CAA) PSD provisions make it unlawful to construct or modify a "major emitting facility", in any area to which the PSD program applies, without a permit, 42 U.S.C. 7475(a). A "major emitting facility" is a stationary source with the potential to emit 250 tons per year of "any air pollutant" (or 100 tons per year for certain types of sources). 42 U.S.C. 7479(1).

In *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Supreme Court held that greenhouse gases, including carbon dioxide, fit within the definition of air pollutant in the CAA. In 2010 and 2011, EPA promulgated a series of greenhouse gas emission standards for new motor vehicles, and made stationary sources

subject to the PSD and title V permit programs based on their potential to emit greenhouse gases. Recognizing, however, that requiring all sources with greenhouse gas emissions above the statutory thresholds would expand these permit programs and make them unadministrable, EPA "tailored" the programs by adopting a "phase-in" approach. The Tailoring Rule (75 FR 31514), published on June 3, 2010, phased in permitting requirements for greenhouse gas emissions. Step 1 of this rule applied to sources that were subject to the PSD and title V programs before greenhouse gases were regulated under the CAA. In Step 1, from January 2 through June 30, 2011, no source would become newly subject to the PSD or title V program solely based on its greenhouse gas emissions; however, sources that were subject to PSD review anyway due to their non-greenhouse gas regulated pollutants would need to comply with the Best Available Control Technology (BACT) emission standards for greenhouse gases if they emitted these gases in significant amounts, defined as at least 75,000 tons per year of carbon dioxide equivalent (CO2e). During Step 2, from July 1, 2011, through June 30, 2012, sources with the potential to emit at least 100,000 tons per year of CO2e would be subject to PSD and Title V permitting for their construction and operation and to PSD permitting for modifications that would increase their greenhouse-gas emissions by at least 75,000 tons per year. EPA codified Steps 1 and 2 at

40 CFR 51.166(b)(48) and 40 CFR 52.21(b)(49) for the purpose of PSD applicability and at 40 CFR 70.2 and 40 CFR 71.2 for title V, in the definition of "subject to regulation".

This action was challenged by numerous parties, including several states. On June 23, 2014, in *UARG* v *EPA*, the Supreme Court ruled that the CAA neither compels nor permits EPA to adopt an interpretation of the CAA requiring a source to obtain a PSD or title V permit solely based on its potential greenhouse gas emissions. The ruling, however, supported EPA's decision to require sources otherwise subject to PSD review to comply with BACT emission standards for greenhouse gases. In other words, with respect to PSD, the ruling upheld PSD permitting requirements for greenhouse gases under Step 1 of the Tailoring rule for "anyway" sources, and invalidated PSD permitting requirement for Step 2 sources.

In a subsequent rulemaking, on August 19, 2015 (80 FR 50199), EPA removed from the CFR several provisions of the PSD and title V permitting regulations that were originally promulgated as part of the Tailoring Rule. Specifically, the provisions that were removed included regulations under review that required sources to obtain a permit based only upon their potential greenhouse gas emissions (40 CFR 51.166(b)(48)(v) and 40 CFR 52.21(b)(49)(v)), and regulations under review that required EPA to consider further phasing-in the greenhouse gas

permitting requirements at lower greenhouse gas emission thresholds. 40 CFR 52.22, 40 CFR 70.12, and 40 CFR 71.13.

The WDNR is modifying its PSD rules in NR 405.07(9) to establish the conditions under which greenhouse gases at a stationary source shall be subject to the PSD regulations. Following the *UARG v. EPA* decision on how greenhouse gas emissions are evaluated, WDNR's modification clarifies that only Step 1 sources will be subject to PSD permitting.

## IV. What Action is EPA Taking?

EPA is proposing to approve WDNR's submittal for revision of the SIP to incorporate the holding in *UARG v. EPA* decision regarding when greenhouse gas emissions must be controlled. EPA has reviewed Wisconsin's November 28, 2017, submittal to approve Wisconsin Administrative Code provision NR 405.07(9) into Wisconsin's SIP, and has found it to be consistent with the June 23, 2014, *UARG v. EPA* ruling.

## V. Incorporation by Reference.

In this rule, EPA is proposing to include a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Wisconsin Administrative Code provision NR 405.07(9) as published in the Register, July 2015, No. 715, effective August 1, 2015. EPA has made, and will continue to make, these documents generally available through

www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

**VI. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 16, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

[FR Doc. 2018-11197 Filed: 5/24/2018 8:45 am; Publication Date: 5/25/2018]